

## STATE OF SOUTH CAROLINA

Michelle Smith and James Smith v. South Carolina  
Electric & Gas CompanyBEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

## COVER SHEET

DOCKET

NUMBER: 2009 - 327 - E

(Please type or print)

Submitted by: K. Chad BurgessSC Bar Number: 69456Address: SCANA Corp.  
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Columbia, SC 29201Telephone: 803-217-8141Fax: 803-217-7931

Other: \_\_\_\_\_

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**DOCKETING INFORMATION** (Check all that apply)
☐ Emergency Relief demanded in petition      ☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: \_\_\_\_\_

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input checked="" type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		



September 11, 2009

**VIA ELECTRONIC FILING**

The Honorable Charles Terreni  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive (29210)  
Post Office Drawer 11649  
Columbia, South Carolina 29211

RE: Michelle and James Smith  
Docket No. 2009-327-E

Dear Mr. Terreni:

Enclosed please find for filing on behalf of South Carolina Electric & Gas Company ("SCE&G") its Motion to Dismiss the complaint of Michelle and James Smith in the above-captioned docket.

By copy of this letter SCE&G is serving a copy of this motion on Michelle and James Smith as well as counsel for the South Carolina Office of Regulatory Staff and enclose a certificate of service to that effect.

If you have any questions, please advise.

Very truly yours,

K. Chad Burgess

KCB/kms  
Enclosure

cc: B. Randall Dong, Esquire  
Michelle and James Smith  
Shannon Bowyer Hudson, Esquire  
(via first-class mail and electronic mail w/enclosure)

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2009-327-E**

IN RE:	)	
	)	
Michelle and James Smith,	)	<b>MOTION TO DISMISS OF</b>
	)	<b>SOUTH CAROLINA</b>
Complainants/Petitioners,	)	<b>ELECTRIC &amp; GAS COMPANY</b>
	)	
v.	)	
	)	
South Carolina Electric & Gas Company,	)	
	)	
Defendant/Respondent.	)	
_____	)	

**INTRODUCTION**

Pursuant to 26 S.C. Code Ann. Regs. 103-829 (1976, as amended) and applicable South Carolina law, Respondent South Carolina Electric & Gas Company ("SCE&G" or "Company") hereby moves the Public Service Commission of South Carolina ("Commission") to dismiss the above-captioned matter for lack of jurisdiction and lack of standing. The Complaint fails to assert any claim within the jurisdiction of the Commission and no justiciable claim exists. As the Complaint fails to make any allegation of a violation of the applicable statutes or regulations under the Commission's purview, this matter should be dismissed. Additionally, the Complainants, Michelle and James Smith (together, the "Smiths"), lack standing to pursue this claim. In support of this motion, SCE&G would respectfully show as follows:

## **FACTUAL BACKGROUND**

As alleged in the Complaint, the Smiths purchased a home in August 2006 on Rainbow Road near Gibbet Road in Bluffton, South Carolina. The Smiths are not customers of SCE&G, but instead receive electric service from Palmetto Electric Cooperative, Inc. ("Palmetto"). On or about August 3, 2009, Michelle and James Smith filed a complaint with the Commission challenging SCE&G's decision to construct a new 2.4 mile long, 115 kilovolt ("kV") transmission line ("115 kV Line") along Gibbet Road, which is needed to continue to provide reliable electric service to SCE&G's customers in Bluffton and surrounding areas.

The Smiths allege that SCE&G installed the high voltage power line along Gibbet Road without choosing the most direct route for the line and without notifying residents who subsequently purchased property near Gibbet Road after SCE&G selected the route along which to construct the new 115 kV Line. The Smiths seek to require SCE&G to either bury its 115 kV Line along Gibbet Road or relocate the line. If the 115 kV Line cannot be relocated, then the Smiths want compensation.

The Towns of Bluffton and Hardeeville are currently experiencing significant growth in their populations. As a result, SCE&G's existing transmission lines and associated facilities do not possess adequate electrical capacity to reliably serve the load growth in these areas. SCE&G evaluated several alternatives in deciding how to remedy this problem. After much thought and consideration, the Company concluded that it was necessary to build a new 115-23 kV substation near the intersection of SC Highway 46 and Gibbet Road and to build a new 115 kV Line to reliably serve the load growth. The addition of the new substation and the new 115 kV Line will, among other things, relieve load being served from the existing substations and will allow new load to be served reliably and ensure an adequate supply of electrical energy to

Bluffton and surrounding areas.

In selecting the best route for the 115 kV Line, SCE&G conducted a comprehensive transmission line siting study. As part of this study, SCE&G identified a 6.72 square mile geographic area for analysis. From an array of environmental, land use, cultural resource, and aesthetic data, SCE&G developed a suitability composite, which displayed areas of least constraint to routing, areas of highest constraint, and a full range of conditions in between. Using this composite, SCE&G identified seven potential routes for the 115 kV Line. The Company presented these seven routes to the public at a community workshop in August 2005 at the Shults Park Center in Bluffton.

Two weeks before the community workshop, SCE&G mailed personal invitations to each of the 4,853 landowners of record in the 6.72 square mile siting study area. SCE&G included a questionnaire with the invitation to give landowners an opportunity to provide information and comments regarding the proposed line routes. These questionnaires were also available at the workshop. Those landowners who could not attend the workshop could mail their comments to SCE&G for consideration.

One hundred and thirty-five (135) people attended the workshop, and twenty-seven questionnaires were completed and returned to the Company. At the community workshop, SCE&G encouraged the attendees to carefully examine the seven proposed routes which were displayed on an array of mapping including aerial photography; to visit the various “workstations” where complete information was available regarding all aspects of the project; and to offer any information concerning the proposed routes.

After compiling the additional information received from the public, local officials, and developers, the Company identified six additional routes bringing the total number of proposed

routes to thirteen. The Company then completed a comprehensive cost estimate for each of the thirteen routes. After analyzing a series of variables, the Company selected the route that minimizes the overall impact of the 115kV Line. The selected route runs partly along Gibbet Road. Additionally, SCE&G entered into an agreement with Palmetto, whereby Palmetto agreed to bury an existing Palmetto electrical distribution line running along Gibbet Road. This agreement allowed SCE&G to minimize right-of-way needs and neutralize the visual effects of the 115 kV Line.

On October 10, 2005, SCE&G mailed a letter to all landowners in the siting study area and to numerous elected officials announcing the final route selection. SCE&G then focused its efforts on acquiring the necessary real property interests, including rights of way, and detailing its engineering plans so as to make the least possible impact along the selected corridor. Construction of the 115 kV Line is underway, and SCE&G anticipates completing the new transmission line by the end of 2009.

### **ARGUMENT**

For each of the reasons set forth fully below, the Complaint fails to raise issues within the Commission's jurisdiction and must therefore be dismissed.

#### **1. South Carolina law does not require SCE&G to obtain Commission approval of its route selection prior to constructing the 115 kV line.**

The Commission is "a governmental body of limited power and jurisdiction, and has only such powers as are conferred upon it either expressly or by reasonably necessary implication by the General Assembly." City of Camden v. South Carolina Pub. Serv. Comm'n, 283 S.C. 380, 382, 323 S.E.2d 519, 521 (S.C. 1984). It is well settled that South Carolina law does not require SCE&G to obtain Commission approval of its route selection when constructing a transmission line with an operating voltage of less than 125 kV. See S.C. Code Ann. §

58-33-110(1) (requiring Commission approval before commencing construction of a “major utility facility”), and S.C. Code Ann. § 58-33-20(2)(b) (defining “major utility facility” to include only “electric transmission line[s] and associated facilities of a designed operating voltage of one hundred twenty-five kilovolts or more” (emphasis added)). Moreover, Commission regulations do not require that SCE&G obtain Commission approval of its route selection for and construction of the 115 kV Line. See S.C. Code Regs. 103-304 (requiring Commission approval only before “the construction and/or operation of any transmission line with a designed voltage of 125 KV or more” and also not requiring a utility to obtain a certificate of public convenience and necessity “for an extension within or to territory already served by it, necessary in the ordinary course of its business.”). In the instant case, the new transmission line is rated at one hundred fifteen (115) kilovolts, which is less than the operating voltage of 125 kV which triggers the requirements of the Utility Facility Siting and Environmental Protection Act. Therefore, under existing South Carolina law, SCE&G is not required to seek Commission approval prior to constructing the 115 kV Line. Consequently, the Commission is without jurisdiction to decide the issues raised or to award the relief sought by the Smiths in their Complaint.<sup>1</sup>

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<sup>1</sup> In the complaint, the Smiths seek compensation as an alternative form of relief if the 115 kV Line is not relocated. However, the Commission is without authority to award monetary damages. See Brenda Bryant v. Carolina Water Serv., Inc., Order No. 97-1003, Docket No. 97-358-W (Pub. Serv. Comm’n of S.C. Nov. 24, 1997) (“[T]his Commission has no statutory authority to order the payment of damages.”); Bobby Watts v. BellSouth Telecommunications, Inc., Docket No. 95-1201-C, Order No. 96-104 (Pub. Serv. Comm’n of S.C. Mar. 5, 1996) (when the complainant requested a monetary award, the Commission held: “The South Carolina Code of Laws does not allow this Commission to award damages under the circumstances of the case at bar....This Commission has no statutory authority to award such damages.”).

**2. Enforcement of real property law is outside the Commission's jurisdiction.**

Boiled down to its essence, the Smiths present to the Commission an issue involving real property law. The Smiths essentially argue that SCE&G should not be able to do what it pleases on real property in which SCE&G has an interest. More specifically, the Smiths contend that SCE&G should not be able to build the 115 kV Line on SCE&G property. But, as this Commission has previously held, the enforcement of property law is "not within the scope of the Commission's regulation." Elrod v. Southern Bell Telephone and Telegraph Co., Order No. 92-406, Docket No. 92-297-C (Pub. Serv. Comm'n of S.C. May 26, 1992) (holding that "while a telephone utility may be subject to the same basic principles of property law as any other entity, the enforcement of those property laws is not within the scope of the Commission's regulation of telephone" and refusing to "investigate Respondent's policy regarding the use of easements and right-of-ways on the ground that [the Commission] lacks jurisdiction to consider the issue"). Therefore, as no claim has been asserted within the Commission's jurisdiction, the Commission cannot entertain this matter, and the Complaint should be dismissed.

**3. The Complaint fails to allege that SCE&G has violated any Commission Order or South Carolina law.**

Under South Carolina law, a "person . . . having an interest in the subject matter . . . may petition in writing setting forth any act or thing done or omitted to be done by any electrical utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer or of any order or rule of the commission." S.C. Code Ann. § 58-27-1940; see also S.C. Code Regs. 103-804(C). Here, the Smiths have not alleged—and cannot allege—any act or omission by SCE&G "in violation . . . of any law which the commission has jurisdiction to administer or of any order or rule of the commission." No law prohibits SCE&G from constructing the 115 kV Line on its own property along Gibbet Road. Nor does any law require SCE&G, which



made its decision public through mailers to residents and local officials, to continue to monitor real estate transactions in the general vicinity of the line construction or to ensure that any subsequent purchasers of real estate have knowledge of the impending construction. In summary, SCE&G has done nothing in contravention of South Carolina law concerning the route selection and construction of the new 115 kV Line. As the Smiths have failed to allege any act or omission by SCE&G "in violation . . . of any law which the commission has jurisdiction to administer or of any order or rule of the commission," the Complaint must be dismissed.

**4. The Complaint must also be dismissed because the Smiths lack standing to pursue their claim.**

The Smiths' Complaint must also be dismissed because the Smiths lack standing to pursue their claim. As previously noted, to file a petition with the Commission, the person must "hav[e] an interest in the subject matter." S.C. Code Ann. § 58-27-1940. Here, the Smiths are not SCE&G customers as they admittedly receive their electric service from Palmetto, and SCE&G neither purchased property from the Smiths nor located the 115 kV Line on any property currently owned by the Smiths. The Smiths therefore lack the requisite "interest" in the construction of the 115 kV Line. Because the Smiths lack an "interest" or a personal stake in the construction of the new transmission line, the Smiths do not have standing to challenge the construction of the new line. See Evins v. Richland County Historic Preservation Comm'n, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (S.C. 2000) ("As a general rule, to have standing, one must generally have a personal stake in the subject matter of the lawsuit, i.e., one must be a real party in interest." ).<sup>2</sup>

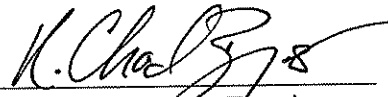
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<sup>2</sup> The Smiths also allege that SCE&G pressured landowners into selling rights of way. To the extent that this allegation is construed as a challenge to the validity of those real estate transactions, the Commission is not the proper forum in which to assert these challenges and the Smiths are not the proper party to bring such a challenge because they did not engage in any real

### CONCLUSION

For the foregoing reasons, SCE&G respectfully requests that the Smiths' Complaint be dismissed inasmuch as the Commission does not have jurisdiction over the route selection or the construction of the 115 kV Line, and the Smiths have asserted no claim whatsoever that falls within the Commission's jurisdiction. Moreover, the Smiths' Complaint must be dismissed because the Smiths lack standing to challenge SCE&G's route selection and construction of the 115 kV Line. For these reasons, the Commission cannot entertain this matter, and the Complaint should be dismissed.

Respectfully submitted,



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matthew.gissendanner@scana.com

*Attorneys for Defendant/Respondent  
South Carolina Electric & Gas Company*

Columbia, South Carolina  
September 11, 2009

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2009-327-E**

**IN RE:**

Michelle and James Smith,

Complainant/Petitioner,

v.

South Carolina Electric & Gas Company,

Defendant/Respondent.

**AFFIDAVIT**

Personally appeared before me Hubert C. Young, III who, having first been duly sworn,  
deposes and states as follows:

1. My name is Hubert C. Young, III, and I am Manager of Transmission Planning for South Carolina Electric & Gas Company ("SCE&G" or "Company"). I oversee the planning and associated analyses of the SCE&G electric transmission system and all interconnection transmission facilities with neighboring utilities to ensure a reliable and cost effective delivery of electric power to SCE&G customers while developing and maintaining strategically supportive infrastructure to sustain and further South Carolina's economic development and the Company's financial integrity.

2. I am competent to make this affidavit.

3. This affidavit is based upon my personal knowledge and review of documents received and maintained in the ordinary course of business by SCE&G. I am familiar with the

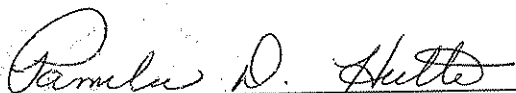
records of SCE&G that pertain to the planning of the transmission line at issue in this proceeding.

4. I assisted SCE&G's attorney in preparing the Company's Motion to Dismiss dated September 11, 2009, which was filed in response to the Complaint of Michelle and James Smith dated August 3, 2009. I have read the Motion to Dismiss and verify that the information contained within the Motion to Dismiss is true and accurate to best of my knowledge, information and belief.

FURTHER AFFIANT SAYETH NOT.

  
Hubert C. Young, III

Sworn to and subscribed before me  
this 11 th day of September, 2009

  
Notary Public for South Carolina  
My Commission Expires: December 30, 2012

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2009-327-E**


IN RE:

Michelle Smith and James Smith,	)	
	)	
Complainants/Petitioners,	)	<b>CERTIFICATE</b>
	)	<b>OF SERVICE</b>
v.	)	
	)	
South Carolina Electric & Gas Company,	)	
	)	
Defendant/Respondent.	)	
<hr/>		

This is to certify that I have caused to be served this day one (1) copy of South Carolina Electric & Gas Company's **Motion to Dismiss and Affidavit** via U.S. Mail and electronic mail to the persons named below at the addresses set forth:

Michelle Smith  
James Smith  
35 Rainbow Road  
Beaufort, SC 29910  
[bwr@hargray.com](mailto:bwr@hargray.com)

Shannon Bowyer Hudson, Esquire  
Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, SC 29201  
[shudson@regstaff.sc.gov](mailto:shudson@regstaff.sc.gov)

  
\_\_\_\_\_  
Karen M. Scruggs

Columbia, South Carolina  
This 11<sup>th</sup> day of September 2009